



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	<b>06/02/04</b>	Bill No:	<b>AB 3092</b>
Tax:	<b>Cigarette and Tobacco Products Licensing Act</b>	Author:	<b>J. Horton</b>
Board Position:		Related Bills:	

***This analysis will only address the bill's provisions that impact the Board.***

### **BILL SUMMARY**

This bill would authorize any State Board of Equalization (Board) employee granted limited peace officer status to issue citations for violations of Stop Tobacco Access to Kids Enforcement (STAKE) Act (Division 8.5 (commencing with Section 22950) of the Business and Professions Code) or Section 308 of the Penal Code.

### **ANALYSIS**

#### **Current Law**

#### **STAKE Act**

The STAKE Act established a statewide enforcement program to take action against businesses that illegally sell tobacco to minors. In general, the Act requires all persons engaging in the retail sale of tobacco products to check the identification of tobacco purchasers if the purchaser reasonably appears to be under 18 years of age, and prohibits all of the following:

- Any person, firm, or corporation from selling, giving, or in any way furnishing to another person who is under the age of 18 years any tobacco, cigarette, or cigarette papers, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance.
- The selling, offering for sale, or distributing tobacco products from a cigarette or tobacco products vending machine unless such vending machines or appliances are located at least 15 feet away from the entrance of a premise issued an on-sale public premise license, as defined.
- Advertising of any tobacco product on any outdoor billboard, as specified.
- The distributing or selling of tobacco products directly or indirectly to any person under the age of 18 years through the United State Postal Service or through any other public or private postal or package delivery service, as described.

#### **Penal Code Section 308**

Penal Code Section 308 prohibits every person, firm, or corporation which knowingly or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, from selling, giving, or in any way furnishing to another person who is under the age of 18 years:

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***This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.***

- Any tobacco, cigarette, or cigarette papers, or
- Any other preparation of tobacco, or
- Any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or
- Any controlled substance.

Any person failing to comply is subject to criminal action for a misdemeanor or to a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine of two hundred dollars (\$200) for the first offense, five hundred dollars (\$500) for the second offense, and one thousand dollars (\$1,000) for the third offense.

Section 308 also provides that every person under the age of 18 years who purchases, receives, or possesses any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking of tobacco, products prepared from tobacco, or any controlled substance shall, upon conviction, be punished by a fine of seventy-five dollars (\$75) or 30 hours of community service work.

Section 308 also requires every person, firm, or corporation which sells, or deals in tobacco or any preparation thereof, to post conspicuously and keep posted at each point of purchase a notice that states, in part, selling tobacco products to anyone under 18 years of age is illegal. Any person failing to do so is punished, upon conviction, by a fine of ten dollars (\$10) for the first offense and fifty dollars (\$50) for each succeeding violation, or by imprisonment for not more than 30 days.

### **Proposed Law**

This bill would add Section 22974.6 to the Business and Professions Code to allow any Board employee granted limited peace officer status to issue citations for violations of Section 308 of the Penal Code and the STAKE Act.

This bill would become effective January 1, 2005.

### **In General**

In 2003, Assembly Bill 71 (J. Horton, Ch. 890) amended Section 830.11 of the Penal Code to allow persons employed by the Board's Investigations Division, who are designated by the executive director, provided that the primary duty of these persons is the enforcement of laws administered by the Board, to exercise the powers of arrest of a peace officer as specified in Section 836, and the power to serve warrants as specified in Sections 1523 and 1530 during the course and within the scope of their employment, if they receive a course in the exercise of those powers pursuant to Section 832. The authority and powers of the persons employed as investigators by the Board would be extended to any place in the state. This bill specifically provided that persons employed by the Board's Investigation Division designated with limited peace officer status would not be entitled to peace officer retirement benefits.

## COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to grant authority to issue citations for violations of Section 308 of the Penal Code and the STAKE Act to Board investigative staff and Alcoholic Beverage Control (ABC) investigative staff. These areas are generally enforced by the Department of Health Services (DHS), which currently employs nine investigative agents state-wide. The Board and ABC currently employ approximately 300 investigative staff members state-wide conducting other investigations in locations where cigarettes and tobacco products are sold. According to the author's office, granting the Board and ABC investigative staff with the authority to enforce these areas will provide the state with a very cost effective addition of approximately 300 agents state-wide that are already working in the field.
2. **Limited peace officer status.** Penal Code Section 830.11 provides that persons employed by the Board's Investigation Division, who are designated by the Executive Director, may exercise limited peace officer powers. Specifically, such persons may exercise the powers of arrest of a peace officer and the power to service warrants during the course and within the scope of their employment.

As of the date of this analysis, the Board has not authorized any employees in the Board's Investigation Division to exercise limited peace officer powers.

## COST ESTIMATE

The Board would incur costs related to developing citations, and notifying the DHS and/or local agency of citations issued. However, these costs would be insignificant (under \$10,000).

## REVENUE ESTIMATE

The provisions of this bill could have a positive impact on the revenue generated from citations issued due to the additional staff with authority to do so. However, the Board has no way of measuring the potential impact these provisions may have, and therefore, cannot provide an estimate at this time.

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